

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE MAURICE MARTIN,

Petitioner,

v.

DOMINGO URIBE, JR., Warden,

Respondent.

No. C 12-0460 CW (PR)

ORDER DISMISSING  
PETITION, DENYING  
CERTIFICATE OF  
APPEALABILITY AND  
GRANTING LEAVE TO  
PROCEED IN FORMA  
PAUPERIS

Docket no. 2

Petitioner, a state prisoner proceeding pro se, has filed this petition for a writ of habeas corpus under 28 U.S.C. § 2254, seeking to amend the abstract of judgment from his state court conviction. He seeks leave to proceed in forma pauperis.

BACKGROUND

According to the allegations in the petition, in 1990 Petitioner pled guilty to a charge of battery with serious bodily injury.

In 1998, he was found guilty of possession of a concealed weapon and possession of marijuana. The trial court found true allegations that he had suffered four prior serious felony convictions and three prior prison sentences and denied his motion to strike the prior convictions. He was sentenced to twenty-eight years to life in state prison.

The conviction and sentence were affirmed on direct appeal and Petitioner's state habeas petitions were denied. Thereafter, Petitioner challenged his 1998 conviction and sentence in a federal habeas corpus petition that was denied by the district

1 court on August 29, 2006. See Martin v. Hickman, C 02-2664 RMW  
2 (PR), Docket no. 44. On June 25, 2007, the Ninth Circuit declined  
3 to grant a certificate of appealability. Id., Docket no. 51.

4 In 2008, the prison's unit classification committee (UCC)  
5 relied upon Petitioner's 1990 conviction for battery with great  
6 bodily injury to find that he is a violent felon and assign him a  
7 higher classification score.

8 In the present petition, Petitioner argues that there was  
9 insufficient evidence for the trial court to find, at his  
10 sentencing proceedings in 1998, that his 1990 guilty plea to the  
11 charge of battery with serious bodily injury was for a violent  
12 felony. Consequently, he asks the Court to remand the matter to  
13 the superior court to make an express finding that the 1990  
14 conviction was not for a violent felony, and to amend the abstract  
15 of judgment accordingly. Petitioner's state habeas corpus  
16 petitions on this issue were denied.

#### 17 DISCUSSION

##### 18 A. Standard of Review

19 This Court may entertain a petition for a writ of habeas  
20 corpus "in behalf of a person in custody pursuant to the judgment  
21 of a State court only on the ground that he is in custody in  
22 violation of the Constitution or laws or treaties of the United  
23 States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21  
24 (1975). A district court shall "award the writ or issue an order  
25 directing the respondent to show cause why the writ should not be  
26 granted, unless it appears from the application that the applicant  
27 or person detained is not entitled thereto." 28 U.S.C. § 2243.

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## 1 B. Petitioner's Claim

2 In his prior federal habeas petition, Petitioner challenged  
3 the validity of his 1998 conviction and sentence. In so doing, he  
4 raised a claim contesting the trial court's designation of his  
5 1990 conviction as a serious felony for three strikes purposes.  
6 See Martin v. Hickman, C 02-2664 RMW (PR), Docket no. 44. The  
7 district court denied the petition on the merits. Id. In the  
8 present petition, Petitioner seeks a new sentencing determination  
9 and amendment of the abstract of judgment from his 1998 conviction  
10 to reflect that his 1990 conviction was not a violent felony.

11 Petitioner is precluded from proceeding with the present  
12 petition because it is a second or successive petition that  
13 attacks the same sentence he challenged in his prior federal  
14 habeas petition. A second or successive petition containing  
15 previously raised or new claims may not be filed in the district  
16 court unless the petitioner first obtains from the United States  
17 Court of Appeals an order authorizing the district court to  
18 consider the petition. 28 U.S.C. § 2244(b)(3)(A). Petitioner  
19 here has not done so.

20 Accordingly, the instant petition is DISMISSED without  
21 prejudice to Petitioner's filing the petition in the United States  
22 Supreme Court, if that is his intent, or refileing the petition in  
23 this court if he obtains the necessary order from the Ninth  
24 Circuit.

## 25 C. Certificate of Appealability

26 The Court finds that no certificate of appealability (COA) is  
27 warranted in this case. "Determining whether a COA should issue  
28 where the petition was dismissed on procedural grounds has two

1 components, one directed at the underlying constitutional claims  
2 and one directed at the district court's procedural holding."  
3 Slack v. McDaniel, 529 U.S. 473, 484- 85 (2000). "When the  
4 district court denies a habeas petition on procedural grounds  
5 without reaching the prisoner's underlying constitutional claim, a  
6 COA should issue when the prisoner shows, at least, that jurists  
7 of reason would find it debatable whether the petition states a  
8 valid claim of the denial of a constitutional right and that  
9 jurists of reason would find it debatable whether the district  
10 court was correct in its procedural ruling." Id. at 484. As each  
11 of these components is a "threshold inquiry," the federal court  
12 "may find that it can dispose of the application in a fair and  
13 prompt manner if it proceeds first to resolve the issue whose  
14 answer is more apparent from the record and arguments." Id. at  
15 485.

16 For the reasons discussed above, Petitioner has not shown  
17 that jurists of reason would find it debatable whether the Court  
18 is correct in its procedural ruling that the present petition is a  
19 second or successive petition. Accordingly, a COA is DENIED.

20 D. Leave to Proceed In Forma Pauperis

21 In light of Petitioner's lack of funds, the application to  
22 proceed in forma pauperis is GRANTED.

23 CONCLUSION

24 For the reasons stated above, the Court orders as follows:

- 25 1. The petition is DISMISSED without prejudice.
- 26 2. A certificate of appealability is DENIED.
- 27 3. The application to proceed in forma pauperis is GRANTED.

1 The Clerk of the Court shall enter judgment and close the  
2 file.

3 This Order terminates Docket no. 2.

4 IT IS SO ORDERED.

5  
6 Dated: 10/3/2012

  
CLAUDIA WILKEN  
United States District Judge